

REMARKS

Claims 1-16, 18-36, and 38-55 are pending in the present Application, and claims 1-16, 18-36, and 38-55 currently stand rejected. Claims 1, 21, and 41 are amended herein. Reconsideration of the Application in view of the foregoing amendments and following remarks is respectfully requested.

35 U.S.C. § 103(a)

In paragraph 3 of the Office Action, the Examiner rejects claims 1, 21, and 41-43 under 35 U.S.C. § 103(a) as being anticipated by U.S. Patent No. 5,838,968 to Culbert (hereafter Culbert) in view of U.S. Patent No. 6,338,080 to Durand et al. (hereafter Durand). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a) which requires that three basic criteria must be met, as set forth in M.P.E.P. §2142:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

The initial burden is therefore on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Regarding the Examiner's rejection of independent claims 1, 21, and 41, the Applicants respond to the Examiner's §103 rejection as if applied to amended independent claims 1, 21, and 41, which have been amended to recite "*referencing a resource characterization with an allocation manager, said resource characterization corresponding to a requested process, said resource characterization being coupled to said electronic device,*" and "*said requested process executing with optimal performance in a non-degraded manner when authorized by said allocation manager, said optimal performance being due to guaranteed pre-allocated resources provided by said electronic device*" and which are limitations that are not taught or suggested either by the cited references, or by the Examiner's citations thereto.

Culbert essentially teaches global resource allocation over a plurality of system tasks by referencing a "task resource utilization vector" to selectively reallocate resources for existing tasks to thereby provide additional resources for new tasks" (see column 3, line 16 through column 4, line 29). However, "[t]he act of retrieving resources from an existing task is called degradation. Degradation occurs when a task is asked to give up some of its resources and move to a lower run level" (column 9, lines 19-23).

In contrast, Applicants teach and claim a "resource characterization that includes one or more resource listings and one or more corresponding resource usage values that are required for an "*optimal performance in a non-degraded manner*" of said requested process." Furthermore, Applicants teach and claim that "*said requested process executes with optimal performance due to guaranteed pre-allocated resources.*" In addition, Applicants recite a "resource

characterization including resource requirements,” and that the resource characterization is “*coupled to said electronic device*”. For at least the foregoing reasons, Applicants submit that Culbert teaches away from Applicants’ invention. A prior art reference which teaches away from the presently claimed invention is “strong evidence of nonobviousness.” In re Hedges, 783 F.2d 1038, 228 U.S.P.Q. 2d 685 (Fed.Cir. 1987).

The Examiner concedes that Culbert fails to teach “guaranteed pre-allocated resources . . . ,” and also fails to teach a “non-degradable manner in conjunction with guaranteeing pre-allocated resource” Applicants concur. However, without citing either Culbert or Durand, the Examiner cursorily states that “pre-allocating resource in a non-degradable manner is well known in the art” It appears that the Examiner is utilizing Official Notice without expressly stating so. Applicants submit that the claimed “non-degradable manner” refers to “said request process executing with optimal performance”, and does not refer to the pre-allocated resources, as stated by the Examiner.

Furthermore, Applicants submit that the foregoing claimed limitations would not have been obvious to one of ordinary skill in the art at the time that the invention was made. Applicants therefore respectfully request the Examiner to cite specific references in support of these rejections, and failing to do so, to reconsider and withdraw the rejections of claims 1-16, 18-36, and 38-55 so that the present Application may issue in a timely manner.

In addition, the Court of Appeals for the Federal Circuit has held that “obviousness cannot be established by combining the teachings of the prior art to

produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination.” In re Geiger, 815 F.2d 686, 688, 2 U.S.P.Q.2d 1276, 1278 (Fed. Cir. 1987). Applicants submit that there is no teaching of a combination that would result in Applicant’s invention, and therefore the obviousness rejections under 35 U.S.C §103 are not proper. In particular, Applicants submit that the cited references, in combination with the Official Notice, do not suggest a combination that would result in Applicants’ invention at least because Culbert teaches away from the present invention, as discussed above.

The foregoing arguments and comments are incorporated here by reference with regard to independent claim 43 which includes many of the same or similar limitations as independent claims 1, 21, and 41. Furthermore, with regard to independent claim 43, Applicants submit that neither Culbert nor Durand mention guaranteeing resources for “isochronous processes”, as claimed by Applicants.

With regard to claim 42, “means-plus-function” language is utilized to recite elements and functionality similar to those recited in the other independent claims which are discussed above. Applicants therefore incorporate those remarks by reference with regard to claim 42. In addition, the Courts have frequently held that “means-plus-function” language, such as that of claim 42, should be construed in light of the Specification. More specifically, means-plus-function claim elements should be *construed to cover the corresponding structure, material or acts described in the specification*, and equivalents thereof.

Applicants respectfully submit that, in light of the substantial differences between the teachings of the cited references and Applicants' invention as disclosed in the Specification, claim 42 is therefore not anticipated or made obvious by the cited references. Applicants specifically direct the Examiner's attention to Applicants' discussion of FIGS. 5-7 (Specification, page 10, line 1 through page 14, line 2) which describes in detail the Applicants' claimed "means for referencing" and "means for handling".

For at least the foregoing reasons, the Applicants submit that claims 1, 21, and 41-43 under are not unpatentable under 35 U.S.C. § 103 over Culbert in view of Durand, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 1, 21, and 41-43 under 35 U.S.C. §103.

In paragraph 4 of the Office Action, the Examiner rejects claims 2-16, 18-20, 22-36, 38-40, and 44-55 under 35 U.S.C. §103(a) as being unpatentable over Culbert and Durand in view of U.S. Patent No. 6,625,643 to Colby et al. (hereafter Colby), and further in view of U.S. Patent No. 6,625,643 to Komuro et al. (hereafter Komuro). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. §103(a). As discussed above, for a valid *prima facie* case of obviousness under 35 U.S.C. §103(a), the prior art references when combined must teach or suggest all the claim limitations."

The initial burden is on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a).

Applicants respectfully traverse the Examiner's assertion that modification of the device of Culbert and Durand according to the teachings of Colby and Komuro would produce the claimed invention. Applicants submit that Culbert and Durand in combination with Colby and Komuro fail to teach a substantial number of the claimed elements of the present invention. Furthermore, Applicants also submit that neither Culbert, Durand, Colby, nor Komuro contain teachings for combining the cited references to produce the Applicants' claimed invention. The Applicants therefore respectfully submit that the obviousness rejections under 35 U.S.C §103 are improper.

Regarding the Examiner's rejection of dependent claims 2-16, 18-20, 22-36, 38-40, and 44-55, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 2-16, 18-20, 22-36, 38-40, and 44-55 so that these claims may issue in a timely manner.

Furthermore, with regard to claims 12, 22, and 46, Applicants submit that the cited references nowhere teach initially setting current available resource values to be "less than one-hundred percent" of total device resources to reserve

resources for essential non-isochronous tasks. In addition, with regard to claim 55, Applicants submit that the cited references fail to teach or disclose a networked electronic device with a “resource characterization including one or more network resource requirements for other electronic entities in said electronic network,” as recited in claim 55.

For at least the foregoing reasons, the Applicants submit that claims 2-16, 18-20, 22-36, 38-40, and 44-55 are not unpatentable under 35 U.S.C. § 103 over Culbert, Durand, Colby, and Komuro, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 2-16, 18-20, 22-36, 38-40, and 44-55 under 35 U.S.C. § 103.

Summary

Applicants submit that the foregoing amendments and remarks overcome the Examiner's rejections under 35 U.S.C. §103(a). Because the cited references, or the Examiner's citations thereto, do not teach the claimed invention, and in light of the differences between the claimed invention and the cited prior art, Applicants therefore submit that the claimed invention is patentable over the cited art, and respectfully request the Examiner to allow claims 1-16, 18-36, and 38-55 so that the present Application may issue in a timely manner. If there are any questions concerning this amendment, the Examiner is invited to contact the Applicants' undersigned representative at the telephone number provided below.

Respectfully submitted,

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